

AMENDED IN SENATE APRIL 29, 2013

SENATE BILL

No. 724

Introduced by Senator Emmerson

February 22, 2013

An act to add Section 1714.26 to the Civil Code, relating to liability.

LEGISLATIVE COUNSEL'S DIGEST

SB 724, as amended, Emmerson. Liability: charitable vision screenings.

Existing law provides immunity to a food facility that donates edible food for any damage or injury resulting from the consumption of the donated food, and to any nonprofit charitable organization or food bank that receives and distributes edible food for any injury or death due to the food, except as specified.

This bill would ~~provide immunity to a church,~~ *limit the liability of a* nonprofit charitable organization, or participating licensed optometrist, ophthalmologist, or volunteer working with a nonprofit charitable organization for any damage or injury resulting from the provision of vision screening ~~and the distribution~~ *and, if applicable, the provision* of donated or recycled eyeglasses, if specified conditions are met. *The bill would make the limitation of liability inapplicable if an action is brought by an officer of a state or local government pursuant to state or local law or if the conduct of the nonprofit charitable organization, optometrist, ophthalmologist, or volunteer includes specified types of misconduct.*

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 1714.26 is added to the Civil Code, to read:

1714.26. (a) Except for *damage or injury* resulting from gross negligence or a willful act, there is no liability for any damage or injury on the part of ~~a church~~, a nonprofit charitable organization that provides vision screenings ~~and distributes~~ *and, if applicable, provides* donated or recycled eyeglasses, or a participating licensed optometrist, ophthalmologist, or *trained* volunteer who works with such a nonprofit charitable organization *in the performance of vision screenings*, if all of the following conditions are met:

(1) The vision screening is provided to address ocular health concerns and, *if applicable*, to provide a temporary solution in the form of donated or recycled eyeglasses until the patient can get a full examination and eyeglasses.

(2) The vision screening is not intended to replace a full ocular health examination provided by a licensed optometrist or ophthalmologist.

(3) The patient signs a waiver acknowledging that the services provided are a temporary solution until the patient can get a full examination by a licensed optometrist or ophthalmologist.

(4) Each vision screening is supervised by ~~a~~ *an attending* licensed optometrist or ophthalmologist.

(5) The eyeglass prescription determinations and ocular health recommendations are provided by ~~a~~ *an attending* licensed optometrist or ophthalmologist.

(6) A written prescription is not provided to the patient.

(7) The eyeglasses provided to the patients are a close or approximate match, within tolerances *allowed by the attending licensed optometrist or ophthalmologist*, to the prescription determined during the vision screening.

(8) The vision screening ~~services~~ and eyeglasses are provided without a charge.

(9) *The optometrist, ophthalmologist, or volunteer is authorized by the nonprofit organization to provide the vision screening and eyeglasses on behalf of the nonprofit organization and is acting within the scope of his or her authorized responsibilities and the guidelines of the nonprofit charitable organization when providing the vision screening or eyeglasses.*

1 (10) *The nonprofit charitable organization provides procedural,*
2 *risk management, and quality control training, as applicable, to*
3 *the participating optometrist, ophthalmologist, or volunteer who*
4 *provides the vision screening or eyeglasses.*

5 (b) *The limitation of liability provided in subdivision (a) is not*
6 *applicable if an action is brought by an officer of a state or local*
7 *government pursuant to state or local law.*

8 (c) *The limitation of liability provided in subdivision (a) is not*
9 *applicable if the conduct of the nonprofit charitable organization,*
10 *optometrist, ophthalmologist, or volunteer includes any of the*
11 *following types of misconduct:*

12 (1) *A crime of violence.*

13 (2) *A hate crime.*

14 (3) *An act involving a sexual offense.*

15 (4) *An act involving misconduct in violation of federal or state*
16 *civil rights laws.*

17 (5) *An act performed while the defendant was under the*
18 *influence of drugs or alcohol.*

19 ~~(b)~~

20 (d) For the purposes of this section, “~~nonprofit~~”:

21 (1) “Nonprofit charitable organization” means an organization
22 exempt from federal income tax as an organization described in
23 Section 501(c)(3) of the Internal Revenue Code.

24 (2) “Vision screening” means a test or examination of an
25 individual using a portion of the usual examination procedures in
26 a comprehensive eye examination and refraction, that are selected
27 or directed by an attending licensed optometrist or
28 ophthalmologist, and are within the guidelines of the nonprofit
29 charitable organization.